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IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 366 of 1984

Hon'ble MR.JUSTICE Y.B.BHATT

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
5. Whether it is to be circulated to the Civil Judge? : NO

SHAH BABULAL ALIAS TRIBHOVAN NAGJI, DECD,THRO HIS HEIR NO 2

Versus

MEMON HAJI USMAN HAJI AZIZ, THRO: HIS HEIRS & L.RS

Appearance:

MR SURESH M SHAH for Petitioners

MR KG VAKHARIA for Respondent

CORAM : MR.JUSTICE Y.B.BHATT
Date of decision: 24/11/2000

ORAL JUDGEMENT

1. This is a revision application under section 29(2) of the Bombay Rent Act at the instance of the legal heir of the original tenant (who died during the pendency of the appeal before the lower appellate court), challenging the judgement and decree passed by the trial court and confirmed by the lower appellate court. The respondent-landlord had sued the defendant-tenant for a

decree of eviction on the ground that he had unlawfully sublet the suit premises and that he was, therefore, entitled to a decree of eviction under section 13(1)(e) of the Bombay Rent Act. The trial court, after appreciating the evidence on record, found in favour of the plaintiff-landlord and passed a decree for eviction. The defendant-tenant preferred an appeal under section 29(1) of the said Act before the lower appellate court. The lower appellate court, after reappreciating the entire evidence on record, dismissed the appeal and confirmed the decree of eviction passed by the trial court. Hence the present revision at the instance of the heirs of the original defendant-tenant.

2. Before proceeding with the merits of the matter it would be pertinent to bear in mind the principles laid down by the Supreme Court while dealing with the revisions arising under section 29(2) of the said Act. The Supreme Court in the case of Patel Valmik Himatlal & Others Vs. Patel Mohanlal Muljibhai [1998(2) GLH 736 = AIR 1998 SC 3325], while approving and reiterating the principles laid down in its earlier decision in the case of Helper Girdharbhai Vs. Saiyad Mohmad Mirasaheb Kadri [AIR 1987 SC 1782], held that High Court cannot function as a court of appeal, cannot reappreciate the evidence on record, cannot discard concurrent findings of fact based on evidence recorded by the courts below, and cannot interfere on grounds of inadequacy or insufficiency of evidence, and cannot interfere, except in cases where conclusions drawn by the courts below are on the basis of no evidence at all, or are perverse. A different interpretation on facts is also not possible merely because another view on the same set of facts may just be possible.

3. Only a few salient features require to be noted. The landlord had contended in the suit that he had rented out the suit premises for business purposes to the first defendant-original tenant, who utilised the premises for conducting his business. However, in or about the end of 1972 or early 1973 the first-defendant original tenant gave up his business, and transferred possession of the suit premises to his son who started a new business in the suit premises. According to the landlord, therefore, this amounted to unlawful transfer of his interest in the suit premises and therefore the landlord is entitled to a decree for eviction.

4. It requires to be noted that the son who was alleged to have been the sub-tenant was joined in the suit as defendant no.2. The defence of the two

defendants was general in nature, the contentions being restricted to denials, and a general assertion that the father and son were doing business in the suit premises "while sitting together". It is pertinent to note that neither in the written statement nor during the course of evidence has either defendant put up a specific case that they were joint in the business when the first defendant started his business in the rented premises on taking the same on rent.

4.1 It was only during the course of the tenant's appeal that a case was put up that the first defendant-tenant and the second defendant son were partners in the said business. An application was given during the course of the appeal at Exh.17 where a prayer was made for production of a document purporting to be a certified copy of an extract from the Registrar of Firms which purported to show the first defendant and the second defendant as partners on 18th April 1970. It is also pertinent to note that the said application was granted i.e. production was permitted. However, it is well understood and conceded by learned counsel for the petitioner that mere production of a document on record does not prove the document nor does it prove the contents of the document. Admittedly the tenant viz. the appellant in the appeal made no attempt and made no application to the lower appellate court for an opportunity to prove the document or the contents of the document. The only other attempt made was to file another application Exh.20 to remand the matter to the trial court for the purpose of proving the alleged partnership. The lower appellate court rightly rejected the said application for remand, probably on the ground that this is merely an attempt on the part of the tenant to delay the proceedings. It would also appear that the said application for remand was rejected on the ground that the same did not fall within the parameters of Order 41, Rule 23, Rule 23-A or Rule 25. The tenant did not challenge the said order passed in that appeal by way of a revision under section 115, CPC and the matter therefore rested there. The net result is that the document at Mark Exh.17/1 remained unproved. However, substantial arguments have been advanced on the basis that this is a certified copy from the public record and that therefore it can be read as evidence without formal proof of the contents.

4.2 In any case, without entering into the controversy, I have considered the submissions of learned counsel for the petitioner-tenant on the assumption that the same can be read as part of the evidence.

4.3 Even if the said document is read as an extract from the Registrar of Firms, it would only go to show that the father and son were partners and/or became partners in a joint business on 10th November 1969 i.e. prior to the filing of the suit, which was filed on 7th July 1973, following the statutory notice (Exh.40) issued on 12th March 1973.

5. There is no controversy that the tenancy was created in favour of the first defendant-original tenant as early as 5th November 1960. It would therefore appear that (even if the submissions of the defendants were accepted, on the basis of the extract from the record of the Registrar of Firms) from November 1960 to November 1969 the original tenant viz. the first defendant was doing the business in the suit premises as a sole proprietor of the said business. Even if we read this document as creating a partnership between the father and son, it would only show that the partnership was created in November 1969.

5.1 Subsequent to the creation of this partnership (if it is accepted as evidence), there is no other documentary evidence to indicate as to how long this partnership continued to exist. However, the oral evidence of the first defendant father and the second defendant son, when considered together clearly establishes that some time in the end of 1972 or early 1973, the father-original tenant ceased to do business in the suit premises, that the son-second defendant obtained possession of the rented premises, and started his own independent business therein under his own name in the context of his own independent business. He obtained licenses in his own name for the commodities he was dealing in (which included kerosene) and also obtained in his own name the necessary registration under the Bombay Shops and Establishments Act. A combined reading of the two depositions of the father and the son also establish that the father had no interest in the son's business and he was only going to the shop on occasions (ostensibly to render assistance to his son). As against this it is established by evidence on record that the son was paying his father Rs.200/- by way of a fixed sum every month. Although an explanation is attempted to show that this amount was paid by way of maintenance, reading the evidence in totality it is obvious that the fixed sum per month being paid by the successor in business to the predecessor in business would be in the nature of consideration either for transfer of the business or for transfer of the premises in question.

5.2 It is pertinent to note at this stage, as already referred to hereinabove, that the written statement Exh.12 filed by the defendants is completely silent as regards the alleged partnership between the two. At that stage the son claimed an independent tenancy dehors the tenancy of his father. It also requires to be noted that the claim of the second defendant-son, as explained in Exh.64, was that the second defendant-son was doing business in the suit premises, but not as a partner.

5.3 It therefore follows on a total consideration of the evidence on record that the original tenancy was in the name of the first defendant-father, and that the father parted with the possession thereof in favour of his son who started his independent business in the suit premises, for a consideration of Rs.200/- per month for the transfer. Even considering the other possibility of a partnership, it would appear that although admittedly the original letting was in favour of the first defendant father as an individual, the father created a partnership with his son nine years after taking the suit premiss on rent, and thereafter a few months prior to the filing of the suit, ceased to have any interest in the partnership business and transferred possession to his son, who started his new and independent business in the suit premises.

5.4 The facts as established from the evidence on record would be completely and totally covered by the Supreme Court decision in the case of Mohammedkasam Vs. Bakerali, reported in 40(1) GLR page 101. The Supreme Court has in the said decision laid down the principle that where a tenant occupies the suit premises as an individual, first takes a partner into his business and then leaves the partnership and the possession of the rented premises, amounts to an illegal transfer of his interest in the suit premises, and therefore is liable to be evicted under section 13(1)(e) of the Bombay Rent Act.

6. On the facts and circumstances of the case, and even on a total reappraisal of the evidence on record, I am unable to take any view in the matter contrary to that of the trial court and confirmed by the lower appellate court.

7. Learned counsel for the petitioners sought to rely upon the following decisions:

- (i) AIR 1999 SC page 3087
- (ii) AIR 1999 SC page 333

(iii) 1996(1) Rent Control Journal Page 392

(iv) AIR 1998 SC page 2773

(v) AIR Gujarat 1987 Page 230

On the facts which are established on record, and in view of the Supreme Court decision in the case of Mohammedkasam (supra), the said decisions cited by the learned counsel for the petitioners have no application to the present case.

8. In the premises aforesaid, I find that there is no substance in the present revision and the same is therefore dismissed. Rule is discharged with no order as to costs.

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